

## DavisPolk

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October 28, 2024

The Honorable Victor Marrero  
United States District Court for the Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street  
New York, NY 10007-1312

Re: *McCrory v. Merrill Lynch, Pierce, Fenner & Smith Incorporated*, No. 1:23-cv-10768-VM-BCM

Dear Judge Marrero:

We represent Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill”) in the above-referenced action (the “Action”). We write jointly with counsel for Plaintiff pursuant to this Court’s October 22, 2024 Order (ECF No. 30) directing the parties to advise the Court whether “they consent for the Court to deem the pre-motion letters to constitute a fully briefed motion to strike and rule on the basis of those letters, or whether the parties request supplemental or full briefing,” and if so, to submit a proposed briefing schedule for the motion. The parties have conferred, and their respective positions are below.

### **Merrill’s Proposal**

Merrill requests the opportunity to provide the Court with full briefing on its motion to strike and to stay discovery (the “Motion”), with page limits governed by Rule II.D.1 of the Court’s Individual Practices. Merrill proposes the following briefing schedule for the Motion:

- Merrill shall file its Motion by October 30, 2024.
- Plaintiff shall file any opposition to the Motion by November 15, 2024.
- Merrill shall file its reply in support of the Motion by December 6, 2024.

While we understand that Plaintiff prefers to rely on the letters and/or meaningfully shortened memoranda of law, Merrill believes that the Court’s default page limits are appropriate, particularly in light of the need to address (i) the significant number of relevant rulings from Judge Caproni, and (ii) both Merrill’s request to strike and its request to stay discovery.

### **Plaintiff’s Proposal**

Plaintiff proposes that the motion be decided on the basis of the pre-motion letters and that if the motion is briefed that it be briefed as follows:

- Merrill shall file its Motion supported by a Memorandum no longer than twelve pages by October 30, 2024.
- Plaintiff shall file its Opposition supported by a Memorandum no longer than twelve pages by November 15, 2024.

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- If the Court gives permission (at this time, or following the filing of the Opposition) for Merrill to file a Reply in further support of the Motion that it be no longer than six pages and filed by November 27, 2024.

Merrill should not require 35 pages of additional briefing to argue why the *Valelly* Court's rulings on money market funds should apply to this action as a matter of law when the Court has ruled that the two actions are not related. Even if the Court accepts Merrill's proposal for more briefing, it should set November 27, not December 6, as Merrill's reply date.

Respectfully submitted,

**WOLF POPPER LLP**

/s/ Robert C. Finkel

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*Attorneys for the Plaintiff and the  
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*Attorneys for Defendant Merrill Lynch, Pierce,  
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**VIA ECF**

cc: All Counsel of Record (via ECF)